IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 965 OF 2002

Shakil Ahmed Shaikh .. Appellant

versus

The State of Maharashtra .. Respondents

...

Mr.S.R. Chitnis, Sr.Counsel with V.B. Jaiswal for the appellant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 1st October 2004.

ORAL JUDGEMENT :-

1. The appellant is challenging the judgement and order passed by the Adhoc Addl. District & Sessions Judge, Thane in Sessions Case no.51 of 2002 dated 22nd August 2002. By the said order, the Adhoc Addl. District & Sessions Judge convicted the

appellant original accused no.1 u/s.489C of the Indian Penal Code and sentenced him to undergo Imprisonment for a period of five years and to pay a fine of Rs.2,000/- and in default to suffer another 1 1/2 year.

2. The appellant along with two others charged u/s.489C of the IPC on the allegation that on 6th April 2000, the appellant accused was found to be in possession of forged or counterfeit currency of Rs.500/- denomination which were 300 in number and accordingly, a charge was framed against the appellant and two others. The trial Court convicted the accused under the said charge and the appellant has therefore, preferred this appeal challenging the judgement and order passed by the trial Court. The learned counsel appearing on behalf of the appellant has submitted that the prosecution had not proved that the said currency noted and certificate which is required to be obtained from the mint was not obtained or produced in the trial Court. He submitted that what was produced at Exhibit-22 was in fact a letter from the Officer of the mint stating therein that the opinion regarding the currency notes would be submitted after two months.

He submitted that therefore since the very basis of the charge was not proved, the appellant was liable to be acquitted. He brought to my notice that it was the duty of the prosecution to have produced the said certificate though it was not necessary to examine an Officer from the mint in view of the provisions of section 292 of the Code of Criminal Procedure. On the production of the said certificate, the trial Court was bound to exhibit the same. He further submitted that apart from the non production of the certificate from the mint, the prosecution had not produced any independent witness to prove the possession of the alleged counterfeit currency. He submitted that out of the five witnesses which were examined by the prosecution, PW no.1 was the Police constable, PW no.2 was also a police constable. PW no.3 is the Investigating Officer. PW no.4 is the panch witness who turned hostile and PW no.5 is the Investigating Officer Balasaheb Koli who took over the investigation from PW no.3 Vilas Patil. He submitted that no independent witnesses were examined and thus, seizure of the alleged fake currency notes was not proved beyond reasonable doubt. He submitted that the trial Court has convicted the accused on

conjectures and submices and not on the basis of substantive evidence.

3. The learned APP appearing on behalf of the State vehemently opposed the said application made by the learned counsel appearing on behalf of the accused. He submitted that as far as Exhibit-22 is concerned, it was obviously a mistake made by the trial Court in exhibiting the wrong document. He submitted that the certificate was infact available in the police papers and was in a sealed packet. I therefore directed the sheristedar to open the sealed packet in the Court and it transpired that the certificate issued by the mine was infact in the sealed envelope. The said certificate stated the reasons why the said notes were counterfeit notes. He submitted that therefore there appeared to be a bonafide mistake in exhibiting the letter which was sent by the mint and instead of exhibiting the certificate, the letter which was on record as Exhibit-22 appeared to have been wrongly exhibited. He submitted that though the said document was not part of the evidence on record, it was part of the record and proceedings and therefore, this Court should take cognizance of the said letter and read

the letter as part of the evidence. This submission was strongly opposed by the learned counsel appearing on behalf of the appellant accused. He submitted that grave prejudice would be caused to the accused if the said certificate is now used in evidence. He submitted that if the correct letter had been exhibited, the learned counsel for the accused could have cross-examined the Investigating Officer regarding the genuineness of the certificate. He submitted that therefore, the Court was now precluded from taking into consideration the said letter.

4. The learned APP further submitted that the prosecution had adduced the evidence of two constables who along with the Investigating Officer had seized the currency notes from the accused. He submitted that possession of counterfeit currency notes was a serious offence and a crime against society and as such, no leniency should be shown to the accused. He submitted that the trial Court had given cogent reasons after appreciating the evidence on record and therefore, there was no reason to take a contrary view than the view which was taken by the trial Court.

5. The prosecution has examined in all five witnesses. The possession of the counterfeit currency is an offence u/s.489C which reads as under:-

> "**489C.** Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

From the perusal of the said section in order to prove the said offence, what is required to be proved is that the person should be in possession of forged currency notes. Secondly, he should have a knowledge or a reason to believe that the same is forged or counterfeit and is intended to be used as genuine or it is likely to be used as genuine. If both these ingredients are proved, then the accused is liable to

be convicted. Thus, the mere possession of any forged counterfeit notes is not sufficient in itself for coming to a conclusion that offence u/s.489C has been made out. The prosecution should also prove knowledge on the part of the accused or believe that the same was forged and would be used as genuine.

6. In the light of these two ingredients, it would be essential to see whether the prosecution has made out a case against the appellant. So far as the accused nos.2 and 3 are concerned, the have been acquitted by the trial Court.

7. I have perused the charge which was framed against the accused and after reading the charge, it appears that no independent charge is framed against the accused no.3 at all. The prosecution also has not taken proper care in producing the relevant record in the Court which is reflected from the fact that instead of exhibiting the certificate which showed that the notes were found in possession of the accused were counterfeit notes, the same letter which was issued by the mind and exhibited as Exhibit-22. Exhibit-22 as it is exhibited is a letter written by the Officer of the mint, Nashik seeking two months

time for the purpose of sending the certificate regarding the genuineness or otherwise of the notes which were sent to the mint. The trial Court has without perusing the document has blindly exhibited the letter which is in fact not an opinion given by the mind regarding the genuineness of the document. Thus, a serious lapse has been caused on the part of the prosecution as also by the trial Court in exhibiting a wrong document.

8. So far as opinion of the Officer of the mint is concerned, the provisions of section 292 of the Code of Criminal Procedure are very clear and which reads as under.

> **292.** Evidence of officers of the Mint.
>
> (1) Any document purporting to be a report under the hand of any such gazetted officer of the Mint or of the India Security Press (including the office of the Controller of Stamps and Stationery) as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly

submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such Officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of his report:

. Provided that no such officer shall be summoned to produce any records on which the report is based.

(3) Without prejudice to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), no such officer shall, except with the permission of the Master of the Mint or the India Security Press or the Controller of Stamps and Stationery, as the case may be, be permitted -

(a) to give any evidence derived from any unpublished official records on which the report is based; or

(b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter of thing.

9. From the aforesaid provision, it is clear that in order to prove the said document through the expert opinion of a gazetted Officer of the mint, it is not necessary to examine such Officer as a witness and that only the production and the Government may by notification specify any matter which is submitted to him for examination and report. Thus in the present case, though the said report was available in the police papers, which is evident from the fact that after opening the seal, the said certificate was found in the police papers, this document was not published as required u/s.292 by notification and it was not submitted to the Court. Thus, there has been in my view a serious error and lapse on the part of the prosecution and also on the part of the trial

Court in exhibiting a wrong document. However, taking into consideration the seriousness of the charge, and gravity of the offence. I have perused the evidence on record minutely in order to see whether the charge has been established beyond reasonably doubt by the prosecution. However, in my view, the prosecution has even otherwise miserably failed in proving the charge against the accused even assuming that the said certificate has been correctly brought on record. I have directed the office to again seal the said document in a sealed envelope from which it was taken out so that it should be treated as part of the record.

10. So far as the other evidence adduced by the prosecution is concerned, no independent witness has been examined by the prosecution except one panch who turned hostile regarding the panchnama of seizure of currency notes from the accused. All the other four witnesses are either police constables or Investigating Officer. PW no.1 Baban Kashinath Nikam has stated that while he was serving as a constable in the local Crime Branch, Thane Rural on 6th April 2000, they received information that one person was going to come with forged notes at the super market,

Mira Road. That the description of the accused was also given to them. Therefore, he along with Sub-Inspector Vilas patil, four constables and panch witnesses went to the said place in a private vehicle and kept a watch on the paid person. After about half an hour, the person of the said description appeared there and he was apprehended by Sub-Inspector Vilas Patil and three currency notes of 500 denomination was found on his person and accordingly, a complaint was made by him which is at Exhibit-13. It is difficult to accept the said evidence as it is firstly not corroborated by any independent witness. PW no.1 has not stated what was the description of the accused which was given to them. He has further not stated as to whether these counterfeit notes were found on the person of the accused. The panch witness who has bene examined has turned hostile. PW no.4 Kesari Jagannath Shetty has stated that he signed the panchnama in the police station. The prosecution has thereafter examined PW no.2 Yunus Khan who is also a police constable attached to local Crime Branch. He has also stated that information was received by the Local Crime Branch that one person was carrying counterfeit currency, was going to come near the super market,

Mira Road. Therefore, he along with four constables went there and apprehended a person who told them that his name was Shakeel. He has stated that the panchas were asked to take personal search of the accused and forged currency notes numbering 300 were found in a plastic bag. The prosecution has examined PW no.3 Vilas Sitaram Patil who has also stated that they apprehended the appellant on the basis of information which was received by them.

11. Even if the evidence of this witnesses is taken as it is and it is held that the possession of the currency notes has been proved, even then the prosecution has not adduced any evidence to show that the accused had knowledge that the said notes were not genuine notes or that the said notes were intended to be used as genuine. In order to prove the commission of the said offence under 489C, both these ingredients have to be proved by the prosecution. In my view, the prosecution has thus miserably failed in proving both these ingredients. PW no.5 Balasaheb Koli has stated that on 11th May 2000, he despatched the bundle of 700 currency notes of Rs.500 denomination to the mint by letter Exhibit-22 and that the notes were sent in a sealed

packet and acknowledgement was received. As stated hereinabove on the perusal of Exhibit-22, it was clear that it is merely a letter sent by the Officers of the Mint informing the Investigating Officer that the opinion would be sent after two months. Nothing else is brought on record.

12. In my view, there is serious lapse in the manner in which the investigation has been done and the manner in which the prosecution has adduced evidence in the trial Court. Similarly, the Adhoc Sessions Judge has not taken proper care to Exhibit the document without verifying whether it is the same document which has been exhibited. It was the duty of the trial Court also to ensure that the proper documents are taken on record. The judgement of the trial Court also to say the least does not take into consideration the requirement of the legal ingredients which are required for coming to the conclusion that the offence which is alleged has been proved beyond reasonable doubt. The trial Court appears to have convicted the accused merely on suspicion and not on the basis of legal proof. It is a settled maxim in criminal law that suspicion cannot take a place of legal proof and cannot form the basis

of any conviction. The offence no matter how heinous or serious it may be, it is a duty of the Court to appreciate the evidence according to law and not be swayed by the seriousness of the offence. The trial Court in paragraph no.13 of this judgement has observed as under:-

> "Offences of this nature deserve to be crubed with a heavy hand since they not only jeopardize the social discipline and individual security but also substantially contribute in shattering the National Economy. The grip of law on such offences must not be loosened for the minor lapses and technical errors in carrying out the investigation. Oflate indifference and non co-operation of individuals in the society is a growing meance which erronically enough is placing such persons in the category of slaves of the criminals and their agents unfortunately infesting even the corridors of the court. However, sticking to the current standard of

> proof endorsed by the Supreme Court, I have no hesitation in pronouncing the verdict in the following terms regretfully leaning towards the leniency in the matter of prescribing the punishment."

13. In my view, the trial Court has clearly misdirected itself and is swayed by the seriousness of the offence and has convicted the accused on the basis of suspicion. The accused is in jail since last two years. In my view, the prosecution has miserably failed in establishing the said offence beyond reasonable doubt against the appellant accused. The finding of the trial Court also to say the least is incorrect. The judgement and order of the trial Court therefore, will have to be set aside. The conviction of the accused is therefore, set aside and he is acquitted of the offence with which he is charged.

14. In the result, appeal is allowed.

15. The accused is acquitted and is directed to

be released forthwith unless he is otherwise required in any other case.

V.M.KANADE, J